

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DONALD MILLER,

Plaintiff,

**ANSWER**

- against -

05 CV 4828 (J.Marrero)

LONG ISLAND RAILROAD a/k/a MTA LONG ISLAND  
RAILROAD and AMTRAK a/k/a NATIONAL PASSENGER  
RAILROAD CORPORATION,

Defendant.

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Defendant NATIONAL RAILROAD PASSENGER CORPORATION ("Amtrak")  
(collectively "Defendant"), by their attorneys, Landman Corsi Ballaine & Ford P.C., hereby  
answers the Verified Complaint herein as follows:

1: Defendant denies knowledge or information sufficient to form a belief as to the truth  
of the allegations contained in paragraph "FIRST" of the Verified Complaint.

2: Defendant denies knowledge or information sufficient to form a belief as to the truth  
of the allegations contained in paragraph "SECOND" of the Verified Complaint.

3: Defendant denies knowledge or information sufficient to form a belief as to the truth  
of the allegations contained in paragraph "THIRD" of the Verified Complaint.

4: Defendant denies knowledge or information sufficient to form a belief as to the truth  
of the allegations contained in paragraph "FOURTH" of the Verified Complaint and refer all  
matters of law to the Court.

5: Defendant admits the truth of each and every allegation contained in paragraph  
"FIFTH" of the Verified Complaint.

6: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "SIXTH" of the Verified Complaint.

7: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "SEVENTH" of the Verified Complaint.

**WITH RESPECT TO A FIRST CAUSE OF ACTION**

8: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "EIGHTH" of the Verified Complaint.

9: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "NINTH" of the Verified Complaint.

10: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "TENTH" of the Verified Complaint.

11: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "ELEVENTH" of the Verified Complaint.

12: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "TWELFTH" of the Verified Complaint.

13: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "THIRTEENTH" of the Verified Complaint.

14: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "FOURTEENTH" of the Verified Complaint.

15: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "FIFTEENTH" of the Verified Complaint.

16: Defendant denies the truth of each and every allegation contained in paragraph

"SIXTEENTH" of the Verified Complaint.

17: Defendant denies the truth of each and every allegation contained in paragraph "SEVENTEENTH" of the Verified Complaint.

18: Defendant denies the truth of each and every allegation contained in paragraph "EIGHTEENTH" of the Verified Complaint.

19: Defendant denies the truth of each and every allegation contained in paragraph "NINETEENTH" of the Verified Complaint.

**WITH RESPECT TO A SECOND CAUSE OF ACTION**

20: With respect to the allegations contained in paragraph "TWENTIETH" of the Verified Complaint, defendant repeats, reiterates and realleges each and every response contained in paragraphs "1" through "19" of this Verified Answer with the same force and effect as if fully set forth at length herein.

21: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "TWENTY-FIRST" of the Verified Complaint.

22: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "TWENTY-SECOND" of the Verified Complaint.

23: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "TWENTY-THIRD" of the Verified Complaint.

24: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "TWENTY-FOURTH" of the Verified Complaint.

25: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "TWENTY-FIFTH" of the Verified Complaint.

26: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "TWENTY-SIXTH" of the Verified Complaint.

27: Defendant denies the truth of each and every allegation contained in paragraph "TWENTY-SEVENTH" of the Verified Complaint.

28: Defendant denies the truth of each and every allegation contained in paragraph "TWENTY-EIGHTH" of the Verified Complaint.

29: Defendant denies the truth of each and every allegation contained in paragraph "TWENTY-NINTH" of the Verified Complaint.

30: Defendant denies the truth of each and every allegation contained in paragraph "THIRTIETH" of the Verified Complaint.

**WITH RESPECT TO A THIRD CAUSE OF ACTION**

31: With respect to the allegations contained in paragraph "THIRTY-FIRST" of the Verified Complaint, defendant repeats, reiterates and realleges each and every response contained in paragraphs "1" through "30" of this Verified Answer with the same force and effect as if fully set forth at length herein.

32: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "THIRTY-SECOND" of the Verified Complaint.

33: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "THIRTY-THIRD" of the Verified Complaint.

34: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "THIRTY-FOURTH" of the Verified Complaint.

35: Defendant denies knowledge or information sufficient to form a belief as to the

truth of the allegations contained in paragraph "THIRTY-FIFTH" of the Verified Complaint.

36: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "THIRTY-SIXTH" of the Verified Complaint.

37: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "THIRTY-SEVENTH" of the Verified Complaint.

38: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "THIRTY-EIGHTH" of the Verified Complaint.

39: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "THIRTY-NINTH" of the Verified Complaint.

40: Defendant denies the truth of each and every allegation contained in paragraph "FORTIETH" of the Verified Complaint.

41: Defendant denies the truth of each and every allegation contained in paragraph "FORTY-FIRST" of the Verified Complaint.

42: Defendant denies the truth of each and every allegation contained in paragraph "FORTY-SECOND" of the Verified Complaint.

43: Defendant denies the truth of each and every allegation contained in paragraph "FORTY-THIRD" of the Verified Complaint.

**WITH RESPECT TO A FOURTH CAUSE OF ACTION**

44: With respect to the allegations contained in paragraph "FORTY-FOURTH" of the Verified Complaint, defendant repeats, reiterates and realleges each and every response contained in paragraphs "1" through "43" of this Verified Answer with the same force and effect as if fully set forth at length herein.

45: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "FORTY-FIFTH" of the Verified Complaint.

46: Defendant denies the truth of each and every allegation contained in paragraph "FORTY-SIXTH" of the Verified Complaint, except admit that Amtrak operated a train in or about the New York Pennsylvania Station on April 19, 2004.

47: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "FORTY-SEVENTH" of the Verified Complaint.

48: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "FORTY-EIGHTH" of the Verified Complaint.

49: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "FORTY-NINTH" of the Verified Complaint.

50: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "FIFTIETH" of the Verified Complaint.

51: Defendant denies the truth of each and every allegation contained in paragraph "FIFTY-FIRST" of the Verified Complaint.

52: Defendant denies the truth of each and every allegation contained in paragraph "FIFTY-SECOND" of the Verified Complaint.

53: Defendant denies the truth of each and every allegation contained in paragraph "FIFTY-THIRD" of the Verified Complaint.

**FIRST AFFIRMATIVE DEFENSE**

54: Any injuries suffered by plaintiff were caused solely by his own negligence and not by any negligence of the defendant.

**SECOND AFFIRMATIVE DEFENSE**

55: Any injuries suffered by plaintiff were caused, in part, by his own negligence, and any recovery by plaintiff must be diminished in proportion to that part of his injuries attributable to his own negligence.

**THIRD AFFIRMATIVE DEFENSE**

56: Any injuries suffered by plaintiff were not caused by a negligent act or omission of defendant or any individual acting under their direction or control.

**FOURTH AFFIRMATIVE DEFENSE**

57: Plaintiff failed to mitigate or otherwise act to lessen or reduce the damages alleged in the Verified Complaint.

**WHEREFORE**, defendant demands judgment dismissing the Verified Complaint herein, together with their costs and disbursements, and such other and further relief as this Court deems appropriate.

Dated: New York, New York  
May 20, 2005

Respectfully submitted,

LANDMAN CORSI BALLAINE & FORD P.C.

By: \_\_\_\_\_

Ronald E. Joseph, Esq. (RJ9302)

Attorneys for Defendant

NATIONAL RAILROAD PASSENGER CORPORATION

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TO: LAW OFFICES OF DANIEL P. BUTTAFUOCO & ASSOCIATES, PLLC  
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**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF NEW YORK     )  
                                      ) ss.:  
COUNTY OF NEW YORK    )

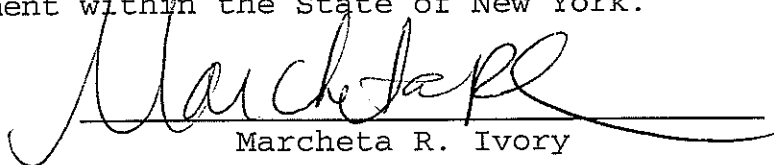
**MARCHETA R. IVORY**, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at BROOKLYN, NEW YORK.

That on the 20<sup>th</sup> day of May, 2005 deponent served the within  
**ANSWER**  
upon

LAW OFFICES OF DANIEL P. BUTTAFUOCO &  
ASSOCIATES, PLLC  
Attorneys for Plaintiff  
144 Woodbury Road  
Woodbury, New York 11797  
(516) 746-8100

Sean P. Constable, Esq.  
Deputy Attorney General  
MTA Long Island Railroad  
Jamaica Station  
Jamaica, New York 11435-4380  
(718) 558-7400

attorneys in this action, at the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

  
Marcheta R. Ivory

Sworn to before me this  
20<sup>TH</sup> day of May 2005

  
Notary

REGINA CAJIGAS  
Notary Public, State of New York  
No. 01CA6032498  
Qualified in Kings County  
Commission Expires November 1, 2005